

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

DEMETRIUS BYNER)	
)	
vs.)	Case No. 5:10-cv-08035-LSC-HGD
)	
UNITED STATES OF AMERICA)	

DEMETRIUS CORNAE BYNER,)	
)	
Petitioner)	
)	
v.)	Case No. 5:10-cv-01705-LSC-HGD
)	
H. J. MARBERRY, Warden of)	
USP Terre Haute, et al.,)	
)	
Respondents)	

ORDER

On September 28, 2010, the magistrate judge's report and recommendation was entered and the parties were allowed therein fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. To date, neither petitioner nor respondents have filed objections.

After careful consideration of the record in this case and the magistrate judge's report and recommendation, the court hereby ADOPTS the report of the magistrate

judge. The court further ACCEPTS the recommendations of the magistrate judge and it is therefore

ORDERED, ADJUDGED and DECREED that the Motion to Vacate, Set Aside or Correct Sentence, filed pursuant to 28 U.S.C. § 2255, or, alternatively, the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241, is due to be and hereby is GRANTED. It is ORDERED that petitioner's sentence in *United States of America v. Byner*, Case No. 5:07-cr-00433-LSC-HGD (N.D.Ala.), is due to be and hereby is VACATED. Petitioner's sentencing guidelines range shall be recalculated and he shall be resentenced based upon the new guidelines range.

Done this 19th day of October 2010.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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